

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

---

UNITED STATES OF AMERICA,

CR 16-50036

Plaintiff,

FACTUAL BASIS STATEMENT

vs.

DARREN SCOTT HELLER,

Defendant.

---

The undersigned parties stipulate that the following facts are true and establish a factual basis for the plea in the action pursuant to Federal Rules of Criminal Procedure 11(b)(3):

On a date prior to May 10, 2015, the Defendant, 47 year-old Darren Heller, his 15 year-old second cousin, K.A., and his wife, Elizabeth Heller (hereinafter "Elizabeth"), traveled together in their semi-truck on an over-the-road trip. Darren Heller is K.A.'s mother's first cousin. He was aware at all relevant times prior to and during the trip that K.A. was 15 years old.

Between May 10, 2015, and May 30, 2015, Heller and K.A. communicated with each other by means of smart phones, i.e. cellular phones that were connected to the Internet via cellular and wi-fi networks. At some point during this time frame, Heller sent a photograph of a penis pacifier to K.A. from his smart phone to hers. This image was sent through Facebook, via the Internet, both of which are instruments of interstate commerce.

This photograph, on its own, and in the context of other communications sent by Heller to K.A. on his smart phone during this time frame, was obscene. The image, alone, and in the context of statements made by Heller to K.A. at or near the time of its transmission, appealed to prurient interests, depicts and describes in an offensive way sexual conduct, and lacked any serious literary, artistic, political, or scientific value. The obscene image of the penis pacifier was sent by Heller to K.A. via Internet through Facebook. Both are instrumentalities of interstate commerce.


According to a law enforcement interview of K.A. conducted by Meade County Sheriff's Deputy Christopher Williams, K.A. alleged that Heller touched her inappropriately multiple times during the trip as she tried to sleep or while she was asleep, including one instance of digital penetration. During this multi-state trip, and during the same time frame that Heller sent K.A. the picture of the penis pacifier, Heller used his smart phone and social media platforms such as Facebook to ask K.A. about her sexual history; to tell her that if she has sex with anyone "3 years older" than her that she needed "to make sure not to tell anyone or get pregnant because they can go to prison"; to tell her she had a "cute butt"; to describe to her specific sex acts such as oral sex; to question her as to whether she had ever had her "boobs sucked on" and if it made her "pussy get really wet"; to ask her whether she shaved her genitalia or masturbated; to ask her the size of her breasts; and, to ask her to show him her breasts. K.A. responded to these messages from Heller by

reminding him that she was 15 and that his sexual references were weird because they were cousins.

K.A. notified Heller that she wanted to leave the truck and end the trip based on Heller's alleged sexual acts and the messages he was sending her. In response, Heller made statements to K.A. apologizing and promising he would not touch her "again." He also encouraged her not to report the matter to law enforcement. This included a message in which Heller offered to buy her marijuana. K.A. reported this conduct to law enforcement immediately upon her return to South Dakota.

9/8/2016  
Date

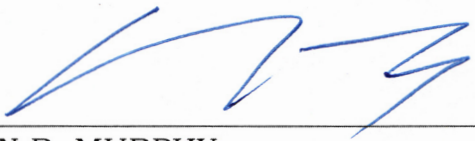
RANDOLPH J. SEILER  
United States Attorney

 for  
SARAH B. COLLINS  
Senior Litigation Counsel  
515 9th Street #201  
Rapid City, SD 57701  
Telephone: (605)342-7822  
Facsimile: (605)342-1108  
E-Mail: sarah.b.collins@usdoj.gov

8/30/16  
Date

  
DARREN SCOTT HELLER  
Defendant

9/1/16  
Date

  
JOHN R. MURPHY  
Attorney for Defendant